

## **EXHIBIT 1 ABBREVIATIONS AND DEFINITIONS**

Unless otherwise specified, wherever the following abbreviations or terms are used in the PPA and the Technical Provisions, they have the meanings set forth below. References to Sections and Appendices mean Sections and Appendices of the PPA unless otherwise specified.

<b>°C</b>	Degrees Celsius
<b>°F</b>	Degrees Fahrenheit
<b>AASHTO</b>	American Association of State Highway and Transportation Officials
<b>A-C or AC</b>	Alternating Current
<b>ACHP</b>	Advisory Council on Historic Preservation
<b>ACI</b>	American Concrete Institute
<b>ADA</b>	Americans with Disabilities Act
<b>ADAS</b>	Automatic Data Acquisition System
<b>ADL</b>	Aerially Deposited Lead
<b>ADS</b>	Authentication and Directory Service
<b>AM</b>	Ante Meridiem (before noon)
<b>AMP</b>	Ampere(s)
<b>AMRL</b>	AASHTO Material Reference Library
<b>ANSI</b>	American National Standards Institute
<b>APE</b>	Area of Potential Effects
<b>APWA</b>	American Public Works Association
<b>AREMA</b>	American Railway Engineering and Maintenance-of-Way Association
<b>ASTM</b>	American Society of Testing and Materials
<b>AT&amp;T</b>	American Telephone & Telegraph
<b>ATC</b>	Alternative Technical Concept
<b>ATIS</b>	Advanced Traveler Information System
<b>ATM</b>	Active Transportation Management
<b>ATP</b>	Acceptance Test Plan
<b>ATR</b>	Automatic Traffic Recorder
<b>ATS</b>	Automatic Transfer
<b>ATSSA</b>	American Traffic Safety Services Association
<b>ATVA</b>	Accident and Terrorist Vulnerabilities Assessment
<b>AV</b>	Audio Visual
<b>AWG</b>	American Wire Gauge
<b>AWS</b>	American Welding Society
<b>BA</b>	Biological Assessment

<b>BICSI</b>	Building Industry Consulting Services International
<b>BIS</b>	Bypass Isolation Switch
<b>BMP</b>	Best Management Practice
<b>BMV</b>	Indiana Bureau of Motor Vehicles
<b>BNC</b>	Bayonet Neill-Concelman type connector
<b>BO</b>	Biological Opinion
<b>CADD</b>	Computer Aided Drafting and Design
<b>CAPWAP</b>	Case Pile Wave Analysis Program
<b>CAT</b>	Category
<b>CB</b>	Citizen's Board
<b>CBR</b>	Concrete Barrier Rail
<b>CCI</b>	Construction Cost Index
<b>CCITT</b>	International Telegraph and Telephone Consultative Committee
<b>CCRL</b>	Concrete Cement Reference Laboratory
<b>CCTV</b>	Closed Circuit Television
<b>CD</b>	Compact Disc
<b>CDCA</b>	Fiber Optic Branch Cable
<b>CDS</b>	Collector-Distributor System
<b>CE</b>	Categorical Exclusion
<b>CERCLA</b>	Comprehensive Environmental Response Compensation and Liability Act
<b>CES</b>	INDOT's Cost Estimating Software
<b>CFD</b>	Computational Fluid Dynamics
<b>CFR</b>	Code of Federal Regulations
<b>CFS</b>	Cubic feet per second
<b>CGL</b>	Commercial General Liability
<b>CIF</b>	Construction in a flood way
<b>CIFS</b>	Common Internet File System
<b>CIP</b>	Cast-in-Place
<b>CIPP</b>	Cured-in-Place Thermosetting Resin Pipe Liner
<b>CMP</b>	Construction Monitoring Plan
<b>CO</b>	Change Order
<b>CPESC</b>	Certified Professional in Erosion and Sedimentation Control
<b>CPI</b>	Consumer Price Index
<b>CPL</b>	Contractor's Pollution Liability (insurance)
<b>CPM</b>	Critical Path Method
<b>CPT</b>	Cone Penetration Test
<b>CPU</b>	Central Processing Unit

<b>CQM</b>	Construction Quality Manager
<b>CQMP</b>	Construction Quality Management Plan
<b>CSC</b>	Customer Service Center
<b>CSL</b>	Cross-Hole Sonic Log
<b>CSM</b>	Context Sensitive Mitigation
<b>CSS</b>	Context Sensitive Solution
<b>CSX</b>	CSX Corporation
<b>CVISNP</b>	Commercial Vehicle Information Systems Networks Program
<b>CVO</b>	Commercial Vehicle Operations
<b>CWTS</b>	Certified Worksite Traffic Supervisor
<b>D&amp;C</b>	Design and Construction
<b>DBE</b>	Disadvantaged Business Enterprises
<b>DC</b>	Direct Current
<b>DDO</b>	Definitive Design of Operations
<b>DEIS</b>	Draft Environmental Impact Statement
<b>DHCP</b>	Dynamic Host Configuration Protocol
<b>DLC</b>	Detector Lead-In Cable
<b>DMS</b>	Dynamic Message Sign
<b>DNS</b>	Domain Naming Service
<b>DOSH</b>	Division of Occupational Safety and Health
<b>DQMP</b>	Design Quality Management Plan
<b>DRT</b>	Disputes Review Team
<b>DSRC</b>	Dedicated Short-Range Communications
<b>DSS</b>	Decent, Safe and Sanitary
<b>DTM</b>	Digital Terrain Model
<b>DTSC</b>	Department of Toxic Substances Control
<b>DVD</b>	Digital Versatile Disc
<b>EA</b>	Expenditure Authorization
<b>EB</b>	Eastbound
<b>EC</b>	Electrical Conductivity
<b>ECM</b>	Environmental Compliance Manager
<b>ECMP</b>	Environmental Compliance and Mitigation Plan
<b>ECP</b>	Erosion Control Plan
<b>ECR</b>	Environmental Commitments Record
<b>EDA</b>	Earth Disturbance Area
<b>EEO</b>	Equal Employment Opportunity
<b>EIR/EIS</b>	Environmental Impact Report/Environmental Impact Statement
<b>EMP</b>	Environmental Management Plan

<b>EMS</b>	Environmental Management System
<b>eNOI</b>	Electronic Notice of Intent
<b>eNOT</b>	Electronic Notice of Termination
<b>ENR-CCI</b>	Engineering News Record Construction Cost Index
<b>EP</b>	Exceedance Probability
<b>EPD</b>	Escrowed Proposal Documents
<b>EPIC</b>	Environmental Permits Issues and Commitments
<b>EQMP</b>	Environmental Quality Management Plan
<b>ERMS</b>	INDOT's Electronic Records Management System
<b>ERP</b>	Emergency Response Plan
<b>ERS</b>	Earthquake Resisting Systems
<b>ERSG</b>	Electrical Resistant Strain Gauges
<b>ESA</b>	Environmentally Sensitive Area
<b>ESCP</b>	Erosion and Sediment Control Plan
<b>ETL</b>	Electronic Testing Laboratories
<b>FAA</b>	Federal Aviation Administration
<b>FAST</b>	Freeway and Arterial System of Transportation
<b>FC</b>	Foot-candle(s)
<b>FCC</b>	Federal Communications Commission
<b>FDC</b>	Field Design Change
<b>FEIS</b>	Final Environmental Impact Statement
<b>FEMA</b>	Federal Emergency Management Agency
<b>FHWA</b>	Federal Highway Administration
<b>FICA</b>	Federal Insurance Contributions Act
<b>F/O</b>	Fiber Optic
<b>FSP</b>	Field Sampling Plan
<b>FT</b>	"F" Shape Truck Barrier
<b>FTP</b>	File Transfer Protocol
<b>FWCA</b>	Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661 <i>et seq.</i> , as amended
<b>FWD</b>	Falling Weight Deflectometer
<b>GAAP</b>	Generally Accepted Accounting Principles
<b>GB</b>	Gigabyte
<b>GIS</b>	Geographic Information System
<b>GP</b>	General Purpose
<b>GPS</b>	Global Positioning System
<b>GSA</b>	General Services Administration
<b>HCDDM</b>	Hydrologic Criteria Drainage Design Manual

<b>HEC</b>	Hydraulic Engineering Center in Davis, California
<b>HMA</b>	Hot Mix Asphalt
<b>HMCP</b>	Hazardous Materials Control Plan
<b>HMHSP</b>	Hazardous Materials Health and Safety Plan
<b>HMMP</b>	Hazardous Materials Management Plan
<b>HPMS</b>	Highway Performance Monitoring System
<b>HPP</b>	Historic Preservation Plan
<b>HPS</b>	High Pressure Sodium
<b>HAS</b>	Hollow Stem Auger
<b>HSPPD</b>	Handling, Storage, Packaging, Preservation and Delivery
<b>HVAC</b>	Heating Ventilation and Air Conditioning
<b>I-65</b>	Interstate 65
<b>IAC</b>	Indiana Administrative Code
<b>IC</b>	Indiana Code
<b>ICPR</b>	Interconnected Channel and Pond Mound Routing
<b>ICRI</b>	International Concrete Repair Institute
<b>IDEM</b>	Indiana Department of Environmental Management
<b>IDM</b>	Indiana Design Manual
<b>IDNR</b>	Indiana Department of Natural Resources
<b>IES</b>	Illuminating Engineer Society
<b>IH</b>	Interstate Highway
<b>IHCP</b>	Interstate Highway Congestion Policy
<b>IHMP</b>	Indiana Department of Natural Resources – Office of Habitat Management and Permitting
<b>IISNS</b>	Internally Illuminated Street Name Signs
<b>IJR</b>	Interchange Justification Report
<b>IMSA</b>	International Municipal Signal Association
<b>in.</b>	Inch
<b>INDOT</b>	Indiana Department of Transportation
<b>INVEST</b>	Infrastructure Voluntary Evaluation Sustainability Tool
<b>IP</b>	Internet Protocol
<b>IPMP</b>	Indiana Department of Natural Resources Office of Project Management and Permitting
<b>IRI</b>	International Roughness Index
<b>IMRS</b>	Impact Resistance System
<b>IRS</b>	Internal Revenue Service
<b>ISA</b>	International Society of Arborists
<b>ISPLS</b>	Indiana Society of Professional Land Surveyors

<b>INSO</b>	Insurance Services Office
<b>ISO</b>	International Organization for Standardization
<b>IT</b>	Information Technology
<b>ITP</b>	Instructions to Proposers
<b>ITS</b>	Intelligent Transportation System
<b>IVHS</b>	Intelligent Vehicle Highway System
<b>IVR</b>	Interactive Voice Response
<b>JPCP</b>	Jointed Plain Concrete Pavement
<b>JPEG</b>	Joint Photographic Experts Group
<b>JRT</b>	Joint Resolution Team
<b>Kbps</b>	Kilobits per Second
<b>L&amp;A</b>	Landscape and Aesthetics
<b>LBP</b>	Lead-Based Paint
<b>LC</b>	Lucent Connector
<b>LCB</b>	Lean Concrete Base
<b>LCCA</b>	Life Cycle Cost Analysis
<b>LCP</b>	Labor Compliance Program
<b>LCS</b>	Lane Closure Signal
<b>LED</b>	Light Emitting Diode
<b>LiDAR</b>	Laser Image Detection and Ranging
<b>LLF</b>	Light Loss Factor
<b>LPG</b>	Liquefied Petroleum Gas
<b>LOS</b>	Level of Service
<b>LOTB</b>	Log of Test Borings
<b>LRFD</b>	Load and Resistance Factor Design (an AASHTO specification)
<b>LRFR</b>	Load and Resistance Factor Rating
<b>LUS</b>	Lane Use Signal
<b>MACS</b>	Mainline Automated Clearance System
<b>MB</b>	Megabyte
<b>MBTA</b>	Migratory Bird Treaty Act
<b>MEPDG</b>	Mechanistic-Empirical Pavement Design Guide
<b>MHHW</b>	Mean Higher High Water
<b>Min.</b>	Minimum
<b>MLLW</b>	Mean Lower Low Water
<b>mm</b>	Millimeter
<b>MMU</b>	Malfunction Management Unit
<b>MOA</b>	Memorandum of Agreement
<b>MOMS</b>	Maintenance On-line Management Subsystem

<b>MOT</b>	Maintenance of Traffic
<b>MOU</b>	Memorandum of Understanding
<b>MOV</b>	Metal Oxide Varistor
<b>MPH</b>	Miles Per Hour
<b>MPO</b>	Metropolitan Planning Organization
<b>MS4</b>	Municipal Separate Storm Sewer System
<b>MSDS</b>	Materials Safety Data Sheet(s)
<b>MSE</b>	Mechanically Stabilized Earth
<b>MUTCD</b>	Indiana Manual on Uniform Traffic (Control) Devices or FHWA Manual on Uniform Traffic (Control) Devices
<b>MVP</b>	Maintenance Vehicle Pullout
<b>N/A</b>	Not Applicable
<b>NAD</b>	North American Datum
<b>NAQTC</b>	Indiana Alliance for Quality Transportation Construction
<b>NAVD88</b>	North American Vertical Datum of 1988
<b>NB</b>	Northbound
<b>NBI</b>	National Bridge Inventory
<b>NBIS</b>	National Bridge Inspection Standards
<b>NCHRP</b>	National Cooperative Highway Research Program
<b>NDC</b>	Notice of Design Change
<b>NDE</b>	Nondestructive Examination
<b>NDT</b>	Non-Destructive Testing
<b>NEC</b>	National Electrical Code
<b>NEMA</b>	National Electrical Manufacturers Association
<b>NEPA</b>	National Environmental Policy Act
<b>NESC</b>	National Electric Safety Code
<b>NFIP</b>	National Flood Insurance Program
<b>NFPA</b>	National Fire Protection Association
<b>NHS</b>	National Highway System
<b>NIRPC</b>	Northwestern Indiana Regional Planning Commission
<b>NMUTCD</b>	Indiana Manual on Uniform Traffic Control Devices
<b>No.</b>	Number
<b>NOI</b>	Notice of Intent submitted to IDEM
<b>NORPASS</b>	North America Preclearance and Safety System
<b>NPDES</b>	National Pollutant Discharge Elimination System
<b>NRCS</b>	Natural Resources Conservation Service
<b>NTCIP</b>	National Transportation Communications for ITS Protocol

<b>NTP</b>	Notice to Proceed
<b>OC</b>	Overcrossing
<b>OEM</b>	Original Equipment Manufacturer
<b>OER</b>	Office of Emergency Response
<b>OH</b>	Overhead
<b>OHWM</b>	Ordinary High Water Mark
<b>OIT</b>	Operator Interface Terminal
<b>OJT</b>	On-the-Job Training
<b>OSHA</b>	Occupational Safety and Health Administration
<b>OTDR</b>	Optical Time-Domain Reflectometer
<b>PA</b>	Section 106 Programmatic Agreement
<b>PBS</b>	Plantmix Bituminous Surfacing
<b>PC</b>	Point of Curvature
<b>PCB</b>	Polychlorinated Biphenyl
<b>PCC</b>	Portland Cement Concrete
<b>PCCP</b>	Portland Cement Concrete Pavement
<b>PCI</b>	Prestressed Concrete Institute
<b>PCM</b>	Preconstruction Manual
<b>PCS</b>	Pavement Condition Survey
<b>PDA</b>	Pile Driving Analyzer
<b>pdf</b>	portable document format
<b>PE</b>	Preliminary Engineering
<b>Ph.</b>	Phone
<b>PI</b>	Point of Intersection
<b>PIP</b>	Public Involvement Plan
<b>PIV</b>	Post Indicator Valve
<b>PLC</b>	Programmable Logic Controller
<b>PMan</b>	Project Manager
<b>PM</b>	Post Meridiem (after noon)
<b>PMIS</b>	Pavement Management Information System
<b>PML</b>	Probable Maximum Loss
<b>PMOGS</b>	Plantmix Open Grading Surface
<b>PMP</b>	Project Management Plan
<b>PPE</b>	Personal Protective Equipment
<b>PPA</b>	Public Private Agreement
<b>PPM</b>	Pages Per Minute
<b>PROWAG</b>	Public Rights-of-Way Accessibility Guidelines
<b>PS&amp;E</b>	Plans, Specifications and Estimates



<b>Psf</b>	Pounds per Square Foot
<b>Psi</b>	Pounds per Square Inch
<b>PT</b>	Point of Tangency
<b>PTZ</b>	Pan, Tilt, and Zoom
<b>QA</b>	Quality Assurance
<b>QC</b>	Quality Control
<b>QMP</b>	Quality Management Plan
<b>QPL</b>	Qualified Products List
<b>RAP</b>	Repair Application Procedure
<b>RAM</b>	Random Access Memory
<b>RCB</b>	Reinforced Concrete Box
<b>RCP</b>	Reinforced Concrete Pipe
<b>RCU</b>	Remote Control Unit
<b>REC</b>	Recognized Environmental Condition
<b>RF</b>	Radio Frequency
<b>RFI</b>	Request For Information
<b>RFP</b>	Request for Proposals
<b>RFQ</b>	Request for Qualifications
<b>RHMA-G</b>	Rubberized Hot Mix Asphalt (Gap Graded)
<b>RID(s)</b>	Reference Information Document(s)
<b>RIO</b>	Remote Input / Output
<b>RMS</b>	Root Mean-Square
<b>ROD</b>	Record of Decision
<b>ROW / R/W</b>	Right of Way
<b>ROW-s</b>	Right-of-Way Information System
<b>RP</b>	Reference Point
<b>RPLS</b>	Registered Professional Land Surveyor
<b>RPM</b>	Raised Pavement Marker
<b>RSP</b>	Recurring Special Provision
<b>RSS</b>	Reinforced Soil Slope
<b>RTM</b>	Real Time Monitor
<b>RWIS</b>	Road Weather Information System
<b>RWQCB</b>	Regional Water Quality Control Board
<b>SAP</b>	Sampling and Analysis Plan
<b>SB</b>	Southbound
<b>SBE</b>	Small Business Enterprise
<b>SC</b>	Subscriber Connector
<b>SCADA</b>	Supervisory Control and Data Acquisition

<b>SD</b>	Secure Digital
<b>SF</b>	Square Foot
<b>SFEIS</b>	Supplemental Final Environmental Impact Statement
<b>SHPO</b>	State Historic Preservation Officer
<b>SI</b>	System Integrator
<b>SPC</b>	Seismic Performance Category
<b>SPCP</b>	Spill Prevention and Control Plan
<b>SPT</b>	Standard Penetration Test
<b>SR</b>	State Route
<b>SSID</b>	Service Set Identification
<b>SSHPP</b>	Site Safety and Health Plan
<b>SSP</b>	Standard Special Provisions
<b>SSTR</b>	Single Slope Traffic Railing
<b>STIP</b>	Statewide Transportation Improvement Program
<b>SUE</b>	Subsurface Utility Engineering
<b>SWPPP</b>	Storm Water Pollution Prevention Plan
<b>TCE</b>	Temporary Construction Easement
<b>TCLP</b>	Toxicity Characteristic Leaching Procedure
<b>TCP/IP</b>	Transmission Control Center/Internet Protocol
<b>TCS</b>	Traffic Control Supervisor
<b>TEES</b>	Transportation Electrical Equipment Specification
<b>TGB</b>	Guardrail Transition Type TGB
<b>TIA</b>	Telecommunications Industry Association
<b>TIFF</b>	Tagged Image File Format
<b>TIM</b>	Traffic Incident Management
<b>TIP</b>	Transportation Improvement Program
<b>TMAP</b>	Traffic Modeling and Analysis Procedures
<b>TMC</b>	Traffic Management Center
<b>TMP</b>	Transportation Management Plan
<b>TMS</b>	Transportation Management System
<b>TOC</b>	Traffic Operations Center
<b>TP</b>	Technical Provisions
<b>TS</b>	Traffic Signal
<b>TTCP</b>	Temporary Traffic Control Plan
<b>TQMP</b>	Traffic Quality Management Plan
<b>TVSS</b>	Transient Voltage Surge Suppressors
<b>TW</b>	Time Warner
<b>UC</b>	Undercrossing

<b>UCC</b>	Uniform Commercial Code
<b>UNRS</b>	USDOT Number Recognition System
<b>UPS</b>	Un-Interruptible Power Supply
<b>US</b>	United States Highway
<b>USACE</b>	United States Army Corps of Engineers
<b>USB</b>	Universal Serial Bus
<b>USDOT</b>	United States Department of Transportation
<b>USEPA</b>	United States Environmental Protection Agency
<b>USFWS</b>	United States Fish and Wildlife Service
<b>USP</b>	Unique Special Provision
<b>USPAP</b>	Uniform Standard of Professional Appraisal Practices
<b>UTACS</b>	Ultra-thin Asphalt Concrete Surface
<b>UTP</b>	Unshielded Twisted Pair
<b>UV</b>	Ultra Violet
<b>VBI</b>	Voice Break-In
<b>VECP</b>	Value Engineering Change Proposal
<b>VGA</b>	Video Graphics Array
<b>VLAN</b>	Virtual Local Area Network
<b>VoIP</b>	Voice Over Internet Protocol
<b>VPN</b>	Virtual Private Network
<b>VWS</b>	Virtual Weigh Station
<b>VWSG</b>	Vibrating Wire Strain Gauges
<b>W</b>	Watts
<b>WAN</b>	Wide Area Network
<b>WAQTC</b>	Western Alliance for Quality Transportation Construction
<b>WB</b>	Westbound
<b>WBS</b>	Work Breakdown Structure
<b>WDR</b>	Waste Discharge Requirement
<b>WEAP</b>	Wave Equation Analysis Pile Driving
<b>WHPA</b>	Wellhead Protection Area
<b>WIM</b>	Weigh in Motion
<b>WLAN</b>	Wireless Local Area Network

**Acceleration Costs** means those fully documented increased costs actually and reasonably incurred by Design-Build Contractor (that is, costs over and above what Design-Build Contractor would otherwise have incurred) which are directly and solely attributable to increasing the performance and production levels of the Work to complete necessary elements or segments of the Work earlier than otherwise anticipated, such as for additional equipment, additional crews, lost productivity, overtime and shift premiums, increased supervision and any unexpected material, equipment or crew movement necessary for resequencing in connection with accelerated efforts.

**Act** means Indiana Code 8-15.7.

**Active Design Memoranda** means those current design memoranda effective as of the Setting Date.

**Additional Properties** has the meaning set forth in Section 6.1.3.

**Adjust** means to perform a Utility Adjustment.

**Adjustment** means a Utility Adjustment.

**Adjustment Standards** means the standard specifications, standards of practice, and construction methods that a Utility Owner customarily applies to facilities (comparable to those being Adjusted on account of the Project) constructed by the Utility Owner (or for the Utility Owner by its contractors), at its own expense. Unless the context requires otherwise, references in the PPA Documents to a Utility Owner's "applicable Adjustment Standards" refer to those that are applicable pursuant to Section 6.3.

**Affidavit of Partial Acceptance** means the affidavit described in Section 20.3.3.

**Affiliate** means (a) any Person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, Design-Build Contractor or any of its members, partners or shareholders holding a 10% or greater interest in Design-Build Contractor; and (b) any Person for which 10% or more of the equity interest in such Person is held directly or indirectly, beneficially or of record by (i) Design-Build Contractor, (ii) any of Design-Build Contractor's members, partners or 10% or greater shareholders or (iii) any Affiliate of Design-Build Contractor under clause (a) of this definition. For purposes of this definition the term "control" means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, family relationship or otherwise. Work performed by Affiliates shall be deemed performed by Design-Build Contractor's own organization.

**Agreement** means the PPA, as defined below.

**Alternative Technical Concept** has the meaning set forth in Section 3 of the ITP.

**Application for Final Payment** means Design-Build Contractor's written request for Final Payment of the Contract Price including reconciliation of all partial payments, claims, changes or other proper adjustments to PPA, as described in Section 12.4.1.

**Area of Potential Effects** means that area set forth in the NEPA Documents.

**As-Built Drawings** has the meaning set forth in Section 2.6 and 2.7 of the Technical Provisions.

**Authorized Representative** has the meaning set forth in Section 24.5.1.

**Basic Configuration** means the following elements defining the Project:

- (a) The Planned ROW Limits and control of access (as set forth in the Reference Plans);
- (b) The number of lanes, subject to Section 7.0 of the Technical Provisions; and
- (c) The through lane and shoulder widths, subject to Section 7.0 of the Technical Provisions.

**Betterment** has, with respect to a given Utility being Adjusted, the meaning (if any) set forth in the Utility Agreement(s) applicable to the Utility; in all other cases, "Betterment" means any upgrading of the Utility in the course of such Utility Adjustment that is not attributable to the construction of the Project and is made solely for the benefit of and at the election of the Utility Owner, including an increase in the capacity, capability, efficiency or function of an Adjusted Utility over that which was provided by the existing Utility. Notwithstanding the foregoing, the following are not considered Betterments unless otherwise provided in the applicable Utility Agreement(s):

- (a) Any upgrading which is required for accommodation of the Project;
- (b) Replacement devices or materials that are of equivalent standards although not identical;
- (c) Replacement of devices or materials no longer regularly manufactured with an equivalent or next higher grade or size;
- (d) Any upgrading required by applicable Governmental Rules;
- (e) Replacement devices or materials that are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase);
- (f) Any upgrading required by the Utility Owner's applicable Adjustment Standards; and

- (g) Any discretionary decision by a Utility Owner that is contemplated within a particular standard described in clause (f) above.

With respect to any Replacement Utility Property Interest, “Betterment” has the meaning (if any) set forth in the applicable Utility Agreement(s). In all other cases, a Replacement Utility Property Interest shall be considered a Betterment, except to the extent that reinstallation of a Utility in the Replacement Utility Property Interest (i) is necessary in order to meet the requirements of the PPA Documents, or (ii) is called for by Design-Build Contractor in the interest of overall economy for the Project.

**Bridge Deck Patching, Full Depth** has the meaning set forth in INDOT’s Standard Specifications Section 722.

**Business Day** means any day that is not a Saturday, Sunday or other day on which (a) INDOT is officially closed for business, or (b) banks located in Indiana are required or authorized by law or executed order to close.

**Calendar Completion Date** means the date on which Final Acceptance occurs.

**Certificate of Final Acceptance** means the formal written acknowledgment issued by INDOT to Design-Build Contractor that Design-Build Contractor has achieved Final Acceptance and all Work has been fully completed in accordance with the PPA Documents.

**Certificate of Partial Acceptance** means the formal written acknowledgment issued by INDOT to Design-Build Contractor that Design-Build Contractor has achieved Partial Acceptance and all Work except for receipt of the IDEM Notice of Termination has been fully completed in accordance with the PPA Documents.

**Certificate of Substantial Completion** means the formal written acknowledgment issued by INDOT to Design-Build Contractor that Design-Build Contractor has achieved Substantial Completion.

**Change Notice** means a notice delivered by INDOT to Design-Build Contractor pursuant to Section 13.2.1.1.

**Change Order** has the meaning set forth in Section 13.1.1.

**Change in Adjustment Standards** means any change in Adjustment Standards after the Setting Date that directly affects the design or construction of Utility Adjustments and is (a) necessary to conform to applicable Law or Change in Law or (b) adopted by the applicable Utility Owner after the Setting Date, excluding any such changes in Adjustment Standards known to Design-Build Contractor as of the Setting Date. A Change in Law that changes, adds to or replaces Adjustment Standards, as well as revisions to the Technical Provisions to conform to such Change in Law, shall be treated as a Change in Adjustment Standards rather than a Department Change to the Technical Provisions.

**Change in Law** means the enactment, adoption, modification, repeal or other change in any Governmental Rule that occurs after the Proposal Date (including any change in the judicial or administrative interpretation of any Governmental Rule, or adoption of any new Governmental Rule) which is materially inconsistent with Governmental Rules in effect on the Proposal Date, but excluding any such change in or new Governmental Rule which was passed or adopted but not yet effective as of the Proposal Date. The term “Change in Law” specifically excludes changes in Project Standards and Adjustment Standards.

**Claim** means a separate demand by Design-Build Contractor for (a) a time extension which is disputed by INDOT, or (b) payment of money, reimbursement, compensation or damages arising from work done by or on behalf of Design-Build Contractor in connection with the PPA Documents which is disputed by INDOT.

**Communications Plan** shall mean Design-Build Contractor’s plan for communications between INDOT and Design-Build Contractor as set forth in Section 1.3.3 of the Technical Provisions.

**Completion Deadline** means the Substantial Completion Deadline and/or Project Acceptance Deadline, as the case may be.

**Construction Closure** means any full or partial closure of any roadway lane that accommodates vehicular traffic for any duration during the Construction Work within the Project Site as described in Section 11.0 of the Technical Provisions.

**Construction Documents** means all Released-for-Construction Documents, working drawings and samples necessary for construction of the Project in accordance with the PPA Documents.

**Construction Manager** has the meaning set forth in Section 1.3 of the Technical Provisions. The Construction Manager is one of the Key Personnel listed in Exhibit 3.

**Construction Quality Management Plan or CQMP** means INDOT-approved plan for quality assurance and quality control of the Construction Work, described in Section 1.3 to the Technical Provisions.

**Construction Superintendent** has the meaning set forth in Section 1.3 of the Technical Provisions. The Construction Superintendent is one of the Key Personnel listed in Exhibit 3.

**Construction Work** means all Work to build or construct, reconstruct, rehabilitate, make, form, manufacture, furnish, install, integrate, supply, deliver or equip the Project and/or the Utility Adjustments. Construction Work includes construction of Landscape and Aesthetics (L&A) Work.

**Contaminated Groundwater** means any extracted, pumped and/or ponded groundwater that contains Hazardous Materials.

**Contract Price** has the meaning set forth in Section 12.1.1.

**Contractor** means the individual, partnership, corporation, Limited Liability Company or joint venture and all principals and representatives with whom the INDOT has contracted for the construction of the Project. Design-Build Contractor will be the Contractor for the Project.

**Controlling Work Items** means the activity or work item on the Critical Path of the Project Schedule having the least amount of total Float.

**Cost and Schedule Proposal** means each submittal serving to identify price and schedule modifications associated with Change Orders issued pursuant to Section 13, meeting all applicable requirements set forth in Section 13.

**Cost Liability** means the obligation to bear the cost of a Utility Adjustment (as between INDOT and the Utility Owner), whether arising out of common or statutory law or contract, as determined by INDOT, in its sole discretion.

**Critical Path** means each critical path on the Project Schedule which ends on the Substantial Completion Deadline or the Final Acceptance Deadline, as applicable (i.e., the term shall apply only following consumption of all available Float in the schedule for Interim Milestone Completion, Substantial Completion or Final Acceptance, as applicable). The lower case term "critical path" shall mean the sequence of activities on the Project Schedule that shows the shortest time path for completion of the Project.

**DBE Coordinator** is defined as Design-Build Contractor's designee to execute the DBE Performance Requirements for the Project.

**DBE Goal** means the goal for percent of work to be performed by the certified DBE that is established by INDOT and specified in Section 7.1.2.

**DBE Performance Plan** means Design-Build Contractor's plan for meeting the DBE goal as referenced in Section 7.1.3.

**DBE Performance Requirements** has the meaning set forth in Section 7.1.1.

**DB-Related Entities** means Design-Build Contractor, Subcontractors, their employees, agents, representatives, shareholders, directors and officers and all other Persons for whom Design-Build Contractor may be legally or contractually responsible.

**DB Utility Work** means the Work associated with Adjustment of Utilities, including (a) the Work described in Sections 6.3 through 6.9 of the PPA and Section 14 of the Technical Provisions, (b) any Betterments added to the scope of the DB Utility Work pursuant to Section 6.6 of the PPA, and (c) any Work to be performed by Design-Build Contractor pursuant to Section 6.1 of the PPA with regard to acquisition of Utility Easements.

**DCR Notice** has the meaning set forth in Section 13.3.2.1.



**Department or INDOT** means the Indiana Department of Transportation.

**Design Quality Manager or DQM** has the meaning set forth in Section 1.3 of the Technical Provisions. The DQM is one of the Key Personnel listed in Exhibit 3.

**Design Workshop** has the meaning set forth in Section 3.4 of the Technical Provisions.

**Design-Build Contractor** means the Person identified as Design-Build Contractor on Page 1 of the PPA.

**Design-Build Contractor Default** has the meaning set forth in Section 16.1.1.

**Design-Build Contractor Project Manager** (or Project Manager) has the meaning set forth in Section 1.3 of the Technical Provisions. The Project Manager is one of the Key Personnel listed in Exhibit 3.

**Design-Build Contractor Releases of Hazardous Materials** means (a) Release(s) of Hazardous Material attributable to the actions, omissions, negligence, willful misconduct, or breach of applicable Governmental Rules or contract by any DB-Related Entity, provided that the removal of Hazardous Materials by Design-Build Contractor or a DB-Related Entity in accordance with the requirements of the PPA Documents shall not be a “Design-Build Contractor Release of Hazardous Material”; (b) Release(s) of Hazardous Materials arranged to be brought onto the Site or elsewhere by any DB-Related Entity; regardless of cause, or (c) use, containment, storage, management, handling, transport and disposal of any Hazardous Materials by any DB-Related Entity in violation of the requirements of the PPA Documents or any applicable Governmental Rule or Governmental Approval.

**Design-Build Contractor’s Utility Conflict Matrix** has the meaning set forth in Section 6.4.1.

**Design Documents** means all drawings (including plans, elevations, sections, details and diagrams), specifications, reports, calculations, records and submittals necessary for design of the Project in accordance with the PPA Documents, following approval thereof by INDOT and others as required by the PPA Documents.

**Design Exception** means formal written documentation for any design exception of the controlling criteria as defined in the Indiana Design Manual Chapter 40-8.0 and FHWA.

**Design Quality Management Plan or DQMP** means the plan described in Section 1.3 of the Technical Provisions.

**Design Review** means any of the reviews of the Design Documents by INDOT or its representatives at Design Hold Points, as described in Section 2.0 of the Technical Provisions.

**Design Work** means all Work of design, engineering, survey, geotechnical, architecture, landscape architecture, and aesthetics for the Project, Project Right of Way acquisition or Utility Adjustments.

**Designer** means the design consulting firm(s) with primary responsibility for the design of the Work.

**Deviation** means any change, deviation, modification or alteration from the requirements of the PPA Documents (including deviations from the Technical Provisions and standards referenced in the PPA Documents). For purposes of this definition, “Deviation” includes design exceptions.

**Differing Site Condition** means discovery of (a) actual subsurface or latent physical conditions at the boring holes identified in the Geotechnical Data Report that differ materially from the conditions indicated at such boring holes in the Geotechnical Data Report (for avoidance of doubt, encountering conditions outside the actual boring holes that differ from conditions indicated at such boring holes is not a Differing Site Condition), or (b) actual subsurface physical conditions within INDOT-Provided Property, including Additional Properties required due to INDOT-Directed Changes but excluding any other Additional Properties, of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as inherent in the work of the character provided for in the PPA, provided, however, in all cases, that Design-Build Contractor had no actual or constructive knowledge of such conditions as of the Proposal Date and such conditions would not have become known to Design-Build Contractor by undertaking Reasonable Investigation prior to the Proposal Date. The term “Differing Site Condition” specifically excludes Utilities, Hazardous Materials, field tiles, and any differences in groundwater depth from the depths noted in the Reference Information Documents or otherwise. The term “Differing Site Condition” specifically includes:

- (i) the discovery at, near or on the Site of any archaeological, paleontological, biological or cultural resource; provided that the existence of such resource was not disclosed in the RFP Documents, was not otherwise known to Design-Build Contractor prior to the Proposal Date and would not have become known to Design-Build Contractor by undertaking Reasonable Investigation prior to the Proposal Date; and
- (ii) the discovery at, near or on the Site of any species listed as threatened or endangered under the federal or State Endangered Species Act or such species’ designated critical habitat, except to the extent that INDOT-Provided Approvals provide for mitigation measures to be undertaken with respect thereto (regardless of whether the species is listed as threatened or endangered as of the Proposal Date), and also subject to the risk allocation provisions contained in Section 6.11 (relating to Design-Build Contractor’s obligation to obtain environmental approvals under certain circumstances).

**Directive Letter** means a letter issued by INDOT pursuant to Section 13.1.1.2.

**Dispute** means a disagreement between the parties as to the merits, amounts, or remedy arising out of an issue in controversy, including a disagreement regarding a Claim.

**Dispute Resolution Procedures** means the procedures for resolving Disputes set forth in Section 19.

**Drainage Design Report** means report(s) prepared by Design-Build Contractor documenting results of the drainage design as described in Section X.X of the Technical Provisions.

**EEO/Workforce Project Plan** has the meaning set forth in Section 7.1.3.

**Effective Date** means the PPA Date or such other date as shall be mutually agreed upon in writing by INDOT and Design-Build Contractor.

**Environment** means air, soils, submerged lands, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, biological resources, including endangered, threatened and sensitive species, natural systems, including ecosystems, and historic, archeological and paleontological resources.

**Environmental Approvals** means all Governmental Approvals arising from or required by any Environmental Law in connection with development of the Project as applicable to the Project, including the NEPA Documents.

**Environmental Compliance and Mitigation Plan or ECMP** means the plan described in Section 6.0 of the Technical Provisions.

**Environmental Laws** means any Governmental Rule applicable to the Project or the Work requiring consideration of environmental impacts or addressing, regulating or imposing liability, actions or standards of conduct that pertains to the Environment, Hazardous Materials, contamination of any type whatsoever, or environmental health and safety matters, and any lawful requirements and standards that pertain to the Environment, Hazardous Materials, contamination of any type whatsoever, or environmental health and safety matters, set forth in any permits, licenses, approvals, plans, rules, regulations ordinances or other Governmental Approvals adopted, or other criteria and guidelines promulgated, pursuant to Governmental Rules applicable to the Project or the Work, as such have been or are amended, modified, or supplemented from time to time (including any present and future amendments thereto and reauthorizations thereof) including those relating to:

- (a) The manufacture, processing, distribution, use, re-use, treatment, storage, disposal, transport or handling of Hazardous Materials;
- (b) Air, soil, surface and subsurface strata, stream sediments, surface water, and groundwater;

- (c) Releases of Hazardous Materials;
- (d) Protection of wildlife, endangered, threatened, and sensitive species and /or designated critical habitat, wetlands, water courses and water bodies, historical, archeological, and paleontological resources, and natural resources;
- (e) The operation and closure of underground or aboveground storage tanks;
- (f) Health and safety of employees and other persons with respect to Hazardous Materials; and
- (g) Notification, documentation and record keeping requirements relating to the foregoing.

Without limiting the above, the term "Environmental Laws" shall also include the following (all as amended):

- (i) The National Environmental Policy Act (42 U.S.C. §§ 4321 *et seq.*), as amended;
- (ii) The Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§ 9601 *et seq.*), as amended ("CERCLA");
- (iii) The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. §§ 9601 *et seq.*), as may be further amended;
- (iv) The Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. §§ 11001 *et seq.*), as amended;
- (v) The Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), as amended;
- (vi) The Federal Water Pollution Control Act, as amended by the Clean Water Act (33 U.S.C. §§ 1251 *et seq.*);
- (vii) The Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*), as amended ("RCRA");
- (viii) The Toxic Substances Control Act (15 U.S.C. §§ 2601 *et seq.*), as amended;
- (ix) The Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 *et seq.*), as amended;
- (x) The Oil Pollution Act (33 U.S.C. §§ 2701, *et seq.*), as amended;

- (xi) The Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 *et seq.*), as amended;
- (xii) The Federal Safe Drinking Water Act (42 U.S.C. §§ 300 *et seq.*), as amended;
- (xiii) The Federal Radon and Indoor Air Quality Research Act (42 U.S.C. §§ 7401 *et seq.*), as amended;
- (xiv) The Occupational Safety and Health Act (29 U.S.C. §§ 651 *et seq.*), as amended;
- (xv) The Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*), as amended;
- (xvi) The Fish and Wildlife Coordination Act (16 U.S.C. §§ 661 *et seq.*), as amended;
- (xvii) The National Historic Preservation Act (16 U.S.C. § 470 *et seq.*), as amended;
- (xviii) The Bald and Golden Eagle Protection Act (16 U.S.C. §§ 688 *et seq.*), as amended;
- (xix) The Migratory Bird Treaty Act (16 U.S.C. §§ 703 *et seq.*), as amended;
- (xx) The Marine Mammal Protection Act, (16 U.S.C. §§ 1361 *et seq.*) as amended;
- (xxi) The Surface Mining Control and Reclamation Act, 30 U.S.C. § 1201 *et seq.*), as amended;
- (xxii) Indiana Statutes, Title 46, Water, Air, Energy, and Environmental Conservation, as amended; and
- (xxiii) Section 4(f) of the U.S. Department of Transportation Act, 49 U.S.C. § 303(c), as amended.

**Environmental Quality Management Plan** or **EQMP** has the meaning set forth in Section 1.3.3 to the Technical Provisions.

**Error** means an error, omission, inconsistency, inaccuracy, deficiency or other defect.

**Erosion and Sediment Control Plan** means the plan prepared in accordance with Sections 2.1.2 and 6.2 of the Technical Provisions to implement the Rule 5 Permit.

**Erosion and Sediment Control Manager** has the meaning set forth in Section 1.3 of the Technical Provisions

**Escrowed Proposal Documents** has the meaning set forth in Section 21.1.

**Event of Default** has the meaning set forth in Section 16.2.1.

**Existing Utility Property Interest** means any right, title or interest in real property (e.g., a fee or an easement) claimed by a Utility Owner as the source of its right to maintain an existing Utility in such real property, which is compensable in eminent domain.

**Federal Requirements** means the provisions required to be part of federal-aid construction contracts, including the provisions set forth in Exhibit 11.

**Field Design Change** means any changes or revisions proposed by the Design-Build Contractor deemed necessary to address situations discovered after the design submittals have been Released-for-Construction. Revisions may be classified as follows:

- Level 1 – Minor changes in the field with no additional engineering analysis and calculations required. Markups are sufficient to complete the work and the item(s) shall be updated in the as-built Record Drawings. By agreeing to this level, it is understood there will likely be no INDOT comments and work may proceed at risk.
- Level 2 – More substantive changes, requiring Plan revisions, but no additional engineering analysis and calculations required. Again, by agreeing to this level, it is understood there will likely be no INDOT comments and work may proceed at risk.
- Level 3 – Significant items requiring revised Plan sheets and engineering analysis and calculations.

**Field Office** has the meaning set forth in Section 1.3 of the Technical Provisions.

**Final Acceptance** means acceptance of the Project by INDOT as evidenced by issuance of a Certificate of Final Acceptance in accordance with Section 20.4.

**Final Acceptance Date** means the date on which Final Acceptance occurs.

**Final Acceptance Deadline** has the meaning set forth in Section 4.2.4.

**Final Payment** means payment by INDOT of the final installment of the price under the PPA, but excluding Retainage and payment for Plant Establishment Work.

**Float** generally means the difference between early completion times and late completion times for activities as shown on the Project Schedule, and shall include any float contained within an activity as well as any period containing an artificial activity (that is, one which is not encompassed within the meaning of the word "Work").

**Force Majeure Event** means any of the events listed in clauses (a) through (h) below, subject to the exclusions listed in clauses (i) through (vii) below, which materially and adversely directly affects Design-Build Contractor's obligations, provided such events

are beyond the control of the DB-Related Entities and are not due to an act, omission, negligence, fraud, recklessness, intentional misconduct, or breach of contract, Governmental Rules or Governmental Approvals by any of the DB-Related Entities, and further provided that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by any DB-Related Entity:

- (a) (i) Any floods (100-year or greater) within one mile of the Project; (ii) any tornados with an enhanced Fujita Score Rating of EF2 or more severe) within one mile of the Project; (iii) any hurricane, fire, lightning; and (iv) and Seismic Event; in each case directly impacting the physical improvements of the Project or performance of Work at the Site;
- (b) Any epidemic in the Lake, Newton, or Jasper County, Indiana, areas;
- (c) Any blockade, rebellion, war, riot, act of sabotage or civil commotion that causes direct physical damage to the Project;
- (d) Any major new State or federal environmental approval necessitated by the discovery at, near or on the Planned ROW Limits of any archaeological, paleontological or cultural resources provided that the existence of such resources or substances was not disclosed in, or ascertainable from, the RFP Documents, was not otherwise known to Design-Build Contractor prior to the Effective Date and would not have become known to Design-Build Contractor by undertaking Reasonable Investigation prior to the Proposal Date;
- (e) Any major new State or federal environmental approval necessitated by the discovery at, near or on the Planned ROW Limits of any species listed as a threatened or endangered species (regardless of whether the species is listed as threatened or endangered as of the Proposal Date), provided that the presence of such species was not disclosed in, or ascertainable from, the RFP Documents, was not otherwise known to Design-Build Contractor prior to the Proposal Date and would not have become known to Design-Build Contractor by undertaking Reasonable Investigation prior to the Proposal Date;
- (f) Issuance of a temporary restraining order or other form of injunction by a court that prohibits prosecution of a material portion of the Work;
- (g) The suspension, termination, interruption, denial or failure to obtain or non-renewal of any INDOT-Provided Approval, except to the extent that such suspension, termination, interruption, denial or failure to obtain or non-renewal arises from failure by any DB-Related Entity to locate or design the Project or carry out the Work in accordance with INDOT-Provided Approvals or other Governmental Approval; and

- (h) The addition of any new condition or requirement in the NEPA Documents, subject to the limitations and conditions described in Section 6.11.

The term “Force Majeure Event” shall be limited to the matters listed above and specifically excludes from its definition the following matters which might otherwise be considered a force majeure event:

- (i) any physical destruction or damage, or delays to the Project which occur by action of the elements, including explosion, drought, rain, flood, snow, or storm, except as specified in clause (a) above;
- (ii) Except as provided in clause (c) above, malicious or other acts intended to cause loss or damage or other similar occurrence, including vandalism or theft;
- (iii) Any strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence;
- (iv) the suspension, termination, interruption, denial, failure to obtain, non-renewal or change in any requirements of any Governmental Approval, except for any such matter falling within the scope of clause (e), (g), (h), or (i) above;
- (v) any increased costs or delays related to Utility Adjustments or failure to obtain any approval, work or other action from a Utility Owner, except to the extent directly due to any of the matters listed in clauses (a) through (i) above;
- (vi) the presence at, near or on the Site, of any Hazardous Material, including substances disclosed in the Reference Information Documents as well as any substances contained in any structure required to be demolished in whole or in part or relocated as part of the Work; and
- (vii) Any matters not caused by INDOT or beyond the control of INDOT or any other matter not listed in clauses (a) through (i) above.

**Full Depth PCCP Patching** has the meaning set forth in INDOT’s Standard Specification 507.05 (a).

**Geotechnical Data Reports** means the following reports included among the Reference Information Documents: DES0101469 I-65 Bridge Replacement over Kankakee Lake&Newton Co.pdf, 1297248\_I-65\_GeoRpt.pdf, I-65 GDR-LAKE-2-5-16.pdf and 1172430 GDR NewtonJasper.pdf.

**Geotechnical Design Report** has the meaning set forth in Section 3.2 of the Technical Provisions.



**Good Industry Practice** means the exercise of the degree of skill, diligence, prudence, and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced designer, engineer, or contractor that (a) is engaged in the same type of undertaking under circumstances and conditions similar to those within the same geographic areas as the Project and (b) seeks in good faith to comply with its contractual obligations, in conformance with (i) all professional engineering principles and construction practices generally accepted as standards of the industry in the State and (ii) all applicable Governmental Rules and Governmental Approvals.

**Governmental Approval** means any permit, license, consent, concession, grant, franchise, authorization, waiver, certification, exemption, filing, lease, registration or ruling, variance or other approval, guidance, protocol, mitigation agreement, agreement or memoranda of agreement/understanding, and any revision, modification, amendment, supplement, renewal or extension of any of the foregoing, required by or with any Governmental Entity in order to perform the Work or any Adjustment work being performed by a Utility Owner, but excluding (a) any such approvals relating to the work to be performed by other contractors as specifically described in the PPA Documents and (b) any such approvals required by or with a Governmental Entity in its capacity as a Utility Owner. Governmental Approvals include Environmental Approvals.

**Governmental Entity** means any federal, state, local or foreign government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than INDOT.

**Governmental Rule** means any statute, law, regulation, ordinance, rule, judgment, order, decree, permit, concession, grant, franchise, license, agreement, directive, guideline, policy requirement or other governmental restriction or any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Entity, which is applicable to the Work, the Project, the Site or any Utility Adjustment work being performed by a Utility Owner, whether now or hereafter in effect.

**Guaranteed Obligations** has the meaning set forth in the Guaranty.

**Guarantor** means each Person providing a Guaranty as described in Section 8.3.

**Guaranty** means each guaranty executed by a Guarantor guaranteeing some or all of the obligations of Design-Build Contractor under the PPA Documents.

**Hazardous Materials** means any element, chemical, compound, mixture, substance, product, waste or other material, whether solid, liquid or gaseous, which is or becomes defined, listed, classified, regulated, or addressed in any way under any Environmental Laws, or any other substances or conditions (including mold and other mycotoxins, fungi or fecal matter) which may create any unsafe or hazardous condition or pose any threat or harm to the environment or human health and safety. "Hazardous Materials" includes the following:

- (a) Any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any Environmental Law or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court;
- (b) Hazardous waste, hazardous materials, hazardous substances, hazardous constituents, and toxic substances, ignitable, corrosive and reactive substances or related materials, whether solid, liquid or gas, including substances defined as or included in the definition of “hazardous substance,” “hazardous waste,” “hazardous material,” “extremely hazardous waste,” “acutely hazardous waste,” “radioactive waste,” “radioactive materials,” “bio-hazardous waste,” “pollutant,” “toxic pollutant,” “contaminant,” “restricted hazardous waste,” “infectious waste,” “toxic substance,” “toxic waste,” “toxic material,” or any other term or expression intended to define, list or classify substances by reason of properties harmful to health, safety or the indoor or outdoor environment (including harmful properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, “TCLP toxicity” or “EP toxicity” or words of similar import) under any applicable Environmental Law;
- (c) Any petroleum or crude oil and any fraction thereof, including any refined petroleum product or any additive thereto or fraction thereof, and any waste oil or waste petroleum byproduct or fraction thereof or additive thereto, but excluding petroleum and petroleum products contained within regularly operated motor vehicles;
- (d) Any solvent, solvent waste, including any refined solvent product, and any waste solvent or waste solvent byproduct, including any additive, byproduct or fraction of any of the foregoing;
- (e) Any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources;
- (f) Any flammable substances or explosives, including unexploded ordnance;
- (g) Any radioactive materials;
- (h) Any asbestos or asbestos-containing materials in structures and or other improvements on or in the Site (other than mineral asbestos naturally occurring in the ground);
- (i) Silica;
- (j) Any lead, cadmium, or lead-based paint or any other heavy metal-based paint or material, or any metal listed in or regulated by the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*);

- (k) Any radon or radon gas;
- (l) Any methane gas or similar or regulated gaseous materials;
- (m) Any urea formaldehyde foam insulation;
- (n) Electrical equipment and components which contain any oil or dielectric fluid containing polychlorinated biphenyls;
- (o) Pesticides, herbicides or fungicides;
- (p) Any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Entity or which may or could pose a hazard to the health and safety of any humans in the vicinity of the Project or to the environment; and
- (q) Soil, surface water or groundwater containing any of the Hazardous Materials as defined above.

**Hazardous Materials Management** means sampling, characterization, stock-piling, storage, backfilling in place, asphalt batching, recycling, treatment, collection, containment, clean-up, remediation, transportation, management in place and/or off-Site disposal of Hazardous Materials, whichever is the most technically appropriate and cost-effective approach authorized under applicable Governmental Rules, using Good Industry Practice.

**Hold Points** mean mandatory verification points that require the Design-Build Contractor to submit identified items to INDOT, and to provide INDOT the opportunity to review, comment, observe, and examine plans, operations and tests. See Technical Provisions Section 2.1.2. Additional Hold Points may be added by INDOT to those already listed in Technical Provisions Section 2.1.2 pursuant to the terms of Technical Provisions Section 2.1.2 thereof.

**IDEM Notice of Termination** means the notice that IDEM issues to close out their Rule 5 Permit when construction of the project has been completed and specific conditions have been met.

**INDOT-Caused Delays** means unavoidable delays, to the extent that they directly affect both a Critical Path and a Completion Deadline, arising from the following matters and no others: (a) INDOT-Directed Changes; (b) failure or inability of INDOT to make INDOT-Provided Property available as provided in Section 6.1.2; (c) failure by INDOT to obtain a INDOT-Provided Approval prior to the dates set forth in Section 6.0 of the Technical Provisions; (d) failure or inability of INDOT to provide responses to proposed schedules, plans, Design Documents, Construction Documents and other submittals and matters for which affirmative response by INDOT is required, within the time periods indicated in the PPA Documents; (e) uncovering, removing and restoring Work, to the extent provided in Section 5.5.3; (f) Necessary Basic Configuration Changes; and (g) Changes in Law to the extent provided in Section 13.9.5. INDOT-Caused Delays

exclude Utility Delays, the addition and implementation by INDOT of Hold Points in addition to those set forth in the lists set forth in Sections 2.2 and 2.3 of the Technical Provisions, and any events that are due to an act, omission, negligence, fraud, recklessness, intentional misconduct, or breach of contract, Governmental Rules or Governmental Approvals by any of the DB-Related Entities, and further provided that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by any DB-Related Entity.

**INDOT-Directed Changes** means (a) any changes in the Work (including changes in the Project Standards or other standards applicable to the Work) which INDOT has directed Design-Build Contractor to perform as described in Section 13.1, and (b) any orders to suspend for convenience exceeding more than 48 hours each or an aggregate total of 144 hours of Work, otherwise scheduled by Design-Build Contractor pursuant to the most recent summary of planned Construction Work activities provided in accordance with Section 1.2 of the Technical Provisions, for all such orders to suspend for convenience pursuant to Section 14.1.

**INDOT-Initiated VECP** has the meaning set forth in Section 22.1.

**INDOT-Provided Approvals** means the Governmental Approvals for the Project obtained or to be obtained by INDOT as specifically listed and identified as such in Exhibit 2. Refer also to Section 6.11.3.

**INDOT-Provided Property** means the property within the Planned ROW Limits.

**INDOT's Project Manager** means the INDOT individual designated by INDOT to manage the Project.

**Incident** means a localized disruption to the free flow of traffic or safety of users of the Project.

**Incident Management Plan** means Design-Build Contractor's plan for detection and response to Incidents, as part of the PMP, as described in Section 11.3.10 of the Technical Provisions.

**Incidental Utility Work** means all of the following work necessary for construction of the Project, including any necessary coordination with Utility Owners and property owners, furnishing design, performing construction, and obtaining and complying with all required Governmental Approvals:

- (i) Protection in Place of Utilities;
- (ii) Traffic control for Utility Adjustment work;
- (iii) Resurfacing and re-striping of streets; reconstruction of curbs, gutters and sidewalks; reinstallation of signage; and reinstallation or replacement of traffic signals;

- (iv) Potholing, electronic detection, surveying and any other methods used to determine Utility locations and other material information concerning Utilities; and
- (v) Temporary Adjustments.

**Indemnified Claim** has the meaning set forth in Section 18.1.1.

**Indemnified Parties** has the meaning set forth in Section 18.1.1.

**INDOT's Standard Drawings** means the Standard Drawings effective as of the Setting Date.

**INDOT's Standard Specifications** means the 2016 Standard Specifications effective as of the Setting Date.

**Instructions to Proposers** means the RFP Document entitled "Instructions to Proposers" issued by INDOT on May 26, 2016, as amended.

**Intellectual Property** means all current and future legal and/or equitable rights and interests in know-how, patents (including applications), copyrights (including moral rights), trademarks (registered and unregistered), service marks, trade secrets, designs (registered and unregistered), utility models, circuit layouts, plant varieties, business and domain names, inventions, solutions embodied in technology, and other intellectual activity, and applications of or for any of the foregoing, subsisting in or relating to the Project, Project design data or Project traffic data. Intellectual Property includes toll-setting and traffic management algorithms, and software used in connection with the Project (including software used for management of traffic on the Project), and Source Code. Intellectual Property is distinguished from physical construction and equipment itself and from drawings, plans, specifications, layouts, depictions, manuals and other documentation that disclose Intellectual Property.

**Invoice Certificate** means the certificate to be provided with each invoice in the form included in Exhibit 5.

**Key Person or Key Personnel** means those individuals appointed by Design-Build Contractor and approved by INDOT from time to time to fill the "Key Personnel" positions identified in Section 1.3 of the Technical Provisions. The specific individuals appointed by Design-Build Contractor and approved by INDOT to initially fill certain of the Key Personnel positions are identified in Exhibit 3.

**Known or Suspected Hazardous Materials** means Hazardous Materials and Recognized Environmental Conditions that are known or reasonably suspected to exist as of the Setting Date from information or analysis contained in or referenced in the Reference Information Documents, including any of the phase 1 environmental site assessments and reports contained in the Reference Information Documents as of the Setting Date.

**Lane Charge Construction Closure** means an Other Allowable Construction Closure with Approval set forth in Column C of Table 11-2 of Section 11 of the Technical Provisions that INDOT has approved.

**Lane Closure or Lane Closures** mean(s) the closure(s) of one or more normal traffic lane(s) or ramp lane(s) prior to Work.

**Lead Engineer** has the meaning set forth in Section 1.3 of the Technical Provisions. The Lead Engineer is one of the Key Personnel listed in Exhibit 3.

**Lien** means any pledge, lien, security interest, mortgage, deed of trust or other charge or encumbrance of any kind, or any other type of preferential arrangement (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature of a security instrument and the filing of or agreement to file any financing statement under the Uniform Commercial Code of any jurisdiction).

**Liquidated Damages** has the meaning set forth in Section 17.

**Listed Subcontractors** has the meaning set forth in Section 7.2.1.

**Losses** means any loss, damage, injury, liability, obligation, cost, response cost, expense (including attorneys', accountants' and expert witnesses' fees and expenses (including those incurred in connection with the enforcement of any indemnity or other provision of the PPA Documents)), fee, charge, judgment, penalty, fine or Third Party Claims. Losses include injury to or death of persons, damage or loss of property, harm or damage to natural resources, and loss of or damage to valuable papers and records.

**Maintenance of Traffic Manager** has the meaning set forth in Section 1.3 of the Technical Provisions. The Maintenance of Traffic Manager is one of the Key Personnel listed in Exhibit 3.

**Major Subcontractor** means any Subcontractor that is a party to a Major Subcontract.

**Major Subcontract** means (a) the lead construction firm (if not the Proposer); (b) the lead engineering/design firm(s) (if not the Proposer); (c) each subcontractor that will perform work valued at 10% or more of the construction work; (d) each subconsultant that will perform 30% or more of the Design Work; (e) any team members that are required for the Proposer team to satisfy the prequalification requirements for any Work and (e) any Subcontract or combination of Subcontracts with a single Subcontractor for construction of the Project or for special fabrication and installation of a portion of the Work with a price in excess of \$5 million.

**Necessary Basic Configuration Change** means a change in the Basic Configuration which is necessary to meet the requirements of the PPA Documents as the result of an Error in the Reference Plans (with the understanding that a change shall be deemed "necessary" only if the Error creates a problem in which Design-Build Contractor is

unable to meet the requirements of the PPA Documents without a material change in the Basic Configuration).

**NEPA Documents** means the certain documents titled (i) Segments A & C Categorical Exclusion, Level 4 (FHWA) –Included in RID as “Categorical Exclusion\_1400326\_Segments A and C (Final - Signed).pdf” dated 12/12/14; (ii) Segment B Categorical Exclusion, Level 1 (INDOT) –Included in RID as “Categorical Exclusion\_0101469 & 0200140\_Segment B (Final - Signed).pdf” dated 3/20/2014; and (iii) Segment D Categorical Exclusion, Level 4 (FHWA).

**New Approval** means any of the following: (a) a new Governmental Approval of the same type as INDOT-Provided Approvals; and (b) a revision, modification, or amendment to one or more of INDOT-Provided Approvals.

**New Utility** shall mean any Utility constructed or installed as a result of the Project for the purpose of providing service to the Project, either directly or indirectly.

**Non-Indiana 811 Mapped Utilities** means a Utility owned or operated by a Utility Owner that is not a member of Indiana 811.

**Nonconforming Work** means any Work, unacceptable, unauthorized or otherwise, that does not conform to (and does not exceed) the requirements of the PPA Documents, the Governmental Approvals, applicable Governmental Rules, the Design Documents or the Construction Documents.

**Notice** means a written notice, notification, correspondence, order or other communication given under the Agreement to a Party that complies with the prescriptions set forth in Section 24.11.

**Notice of Design Change** means any changes or revisions proposed by the Design-Build Contractor’s design team deemed necessary to address situations discovered after the design submittals have been Released-for-Construction.

**Notice of Partial Termination for Convenience** means written notice issued by INDOT to Design-Build Contractor terminating part of the Work of Design-Build Contractor for convenience.

**Notice of Termination for Convenience** means written notice issued by INDOT to Design-Build Contractor terminating the Work of Design-Build Contractor for convenience.

**Notice to Proceed** means the written authorization issued by INDOT pursuant to Section 4.1.2 that permits Design-Build Contractor to proceed with the Work.

**Open Book Basis** means providing INDOT all underlying assumptions, price quotes and data associated with pricing or compensation (whether of Design-Build Contractor or INDOT) or adjustments thereto, including assumptions as to costs of the Work, schedule, composition of equipment spreads, equipment rates, labor rates, productivity,

estimating factors, design and productivity allowance, contingency and indirect costs, risk pricing, discount rates, interest rates, and other items reasonably required by INDOT to satisfy itself as to the reasonableness of the amount.

**Overhead Structure** means a roadway, trail, or pedestrian structure over the I-65 roadway.

**Partial Acceptance** has the meaning as set forth in Section 20.3.1.

**Partial Acceptance Deadline** has the meaning set forth in Section 4.2.3.

**Partial Depth HMA Patching** has the meaning set forth in INDOT's Standard Specification 507.05 (b)

**Partial Termination for Convenience** means a partial termination of the PPA pursuant to Section 15.

**Party** means Design-Build Contractor or INDOT, as the context may require, and "Parties" shall mean Design-Build Contractor and INDOT, collectively.

**Patching Allowances** has the meaning set forth in Section 12.1.3.1.

**Patching Concrete Structures** has the meaning set forth in INDOT Standard Specifications Section 710.

**Payment Bond** means the Payment Bond described in Section 8.1.2.

**Performance Bond** means the Performance Bond described in Section 8.1.1.

**Permitted Construction Closure** means a Construction Closure that is (a) a compliant and noticed Allowable Construction Closure listed in Column B of Table 11-2 of Technical Provisions Section 11; or (b) an INDOT-approved Other Allowable Construction Closure with Approval listed in Column C of Table 11-2 of Technical Provisions Section 11, including a Lane Charge Construction Closure, each of which is noticed, planned, and, as applicable, pre-approved in accordance with the requirements of the PPA Documents.

**Person** means any individual, corporation, company, voluntary association, partnership, trust, unincorporated organization or Governmental Entity.

**Planned ROW Limits** means the boundaries of the real property that INDOT intends to make available for permanent improvements included in the Project, as shown on the Reference Plans included in the RID.

**Plans** means (only where capitalized) the plans, profiles, typical cross-sections, standard drawings, working drawings, and supplemental drawings or exact reproductions thereof which show the location, character, dimensions, and details of the Work.



**PPA** means, depending on the context (as determined by INDOT), (a) that certain public-private agreement to which this Exhibit 1 is attached, executed by INDOT and Design-Build Contractor, including any and all amendments thereto, or (b) collectively, the PPA Documents which establish the respective rights and obligations of INDOT and Design-Build Contractor.

**PPA Date** means the date of the PPA.

**PPA Documents** has the meaning set forth in Section 1.2.

**Preliminary Baseline Schedule** means the preliminary schedule for the Project included in the Proposal.

**Price Proposal** means the total price for performance of the Work set forth in the Proposal documents.

**Professional Services** means all Work performed under the PPA other than Construction Work, including the following services and Work: (a) design and engineering; (b) public involvement; (c) surveying; (d) Utility relocation design; and (e) environmental permitting and compliance services.

**Progress Meeting** has the meaning set forth in Attachment 1-1, Part A of the Technical Provisions.

**Progress Report** has the meaning set forth in Attachment 1-1, Part A of the Technical Provisions.

**Prohibited Construction Closure** means any Construction Closure that is not (a) a compliant and noticed Allowable Construction Closure listed in Column B of Table 11-2 of Technical Provisions Section 11; or (b) an INDOT-approved Other Allowable Construction Closure with Approval listed in Column C of Table 11-2 of Technical Provisions Section 11, including a Lane Charge Construction Closure. Any Construction Closure under (a) or (b) that is not completed and removed by the time required by the PPA Documents, notices and approvals, if any, shall be considered a Prohibited Construction Closure.

**Project** means the improvements to be designed and constructed by Design-Build Contractor and all other Work to be provided by Design-Build Contractor in accordance with the PPA Documents.

**Project Baseline Schedule** means the logic-based critical path schedule for all Work through Final Acceptance, as more particularly described in Section 1.3.2 of the Technical Provisions.

**Project Management Plan** or **PMP** means the document, including approved changes, additions and revisions, prepared by Design-Build Contractor and approved by INDOT describing quality assurance, quality control and other activities necessary to manage the development, design and construction of the Project, containing INDOT-approved component parts, plans and documentation described in Section 1.3 of the Technical Provisions.

**Project ROW** means the property within the Planned ROW Limits and the Additional Properties, but excluding therefrom any portion of the Planned ROW Limits eliminated from the Project by a Change Order.

**Project-Specific Locations** means areas in which Design-Build Contractor proposes temporary Project-specific activities in connection with the Construction Work outside the Planned ROW Limits, such as construction work sites, temporary work areas, lay down areas, staging areas, storage areas, stockpiling areas, earth work material borrow sites, equipment parking areas, and similar areas.

**Project Schedule** means one or more, as applicable, of the logic-based critical path schedules (the Project Baseline Schedule, the Project Status Schedule, the Project recovery schedule, and the Final CPM Schedule) for all Work leading up to and including Substantial Completion and Final Acceptance, and for tracking the performance of such Work, as the same may be approved by INDOT, revised and updated from time to time in accordance with Section 1.3.2 of the Technical Provisions.

**Project Standards** has the meaning set forth in Sections 2.3 and 3.0 of the Technical Provisions.

**Project Status Schedule** has the meaning set forth in Section 1.3.2 of the Technical Provisions.

**Proposal** means the written offer of Design-Build Contractor submitted in response to the Request for Proposals, as it may have been supplemented in accordance with Section 5.8 of the ITP.

**Proposal Commitments** has the meaning set forth in Exhibit 7.

**Proposal Date** means August 16, 2016.

**Proposed Disposition** means, for each Utility, the determination (which may be preliminary or final, as the context may require) as to whether such facility will require any of the following: (a) removal, (b) abandonment, (c) Protection in Place, (d) Adjustment, (e) is a proposed new Utility, or (f) will not be impacted by the Project in any significant way (i.e., “no impact”).

**Proprietary Intellectual Property** means Intellectual Property created, used, applied or reduced to practice in connection with the Project or the Work that derives commercial value from its protection as a trade secret under applicable Governmental Rules or from its protection under patent law.

**Protected Characteristics** has the meaning set forth in Section 7.3.6 of the PPA

**Protection in Place** or **Protect in Place** means any activity undertaken to avoid damaging a Utility which does not involve removing or Adjusting that Utility, including staking the location of a Utility, avoidance of a Utility’s location by construction equipment, installing steel plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and installing physical barriers. For example,

temporarily lifting power lines without cutting them would be considered Protection in Place; whereas temporarily moving power lines to another location after cutting them would be considered a Temporary Adjustment. The term Protection in Place includes both temporary measures and permanent installations meeting the foregoing definition.

**Public Information Plan or (PIP)** has the meaning set forth in Section 5.1.3 of the Technical Provisions.

**Public Involvement Plan Manager** means the person designated by INDOT to oversee Design-Build Contractor's public information.

**Public Records Law** means IC 5-14-3, as amended from time to time.

**Punch List** has the meaning set forth in Section 20.2.

**Quality Management Plan** has the meaning set forth in Section 1.3.3 of the Technical Provisions.

**Reasonable Accuracy** means with respect to the description or identification of a Utility in the Utility Information:

- (a) The Utility's actual centerline location is located at or less than five (5) feet distant from the horizontal centerline location indicated therefor in the Utility Information (without regard to vertical location);
- (b) The Utility Information does not show the Utility as abandoned (i.e., nonexistent except "on paper", or existent but no longer active) when in fact the Utility exists and is active;
- (c) The Utility Information shows non-existent or inactive Utilities as abandoned; or
- (d) The Utility has an actual nominal diameter (excluding casings and any other appurtenances) greater than 12 inches, and its actual nominal diameter is either greater than or less than the diameter shown in the Utility Information by 25% or less of the diameter shown in the Utility Information.

Any other inaccuracies in the Utility Information (e.g., as to type of material or encasement status) shall have no impact on "reasonable accuracy" of its identification and shall not result in a determination that the Utility was not identified with "reasonable accuracy." If there is any discrepancy between any of the components of the Utility Information, only the most accurate information shall be relevant for purposes of determination of "reasonable accuracy."

**Reasonable Investigation** means the following activities by appropriate, qualified professionals prior to the Setting Date:

- (a) Visit and visual inspection of the Site and adjacent locations, except areas to which access rights have not been made available by the Setting Date;

- (b) Review and analysis of all Reference Information Documents;
- (c) Review and analysis of INDOT-Provided Approvals available prior to the Setting Date;
- (d) Reasonable inquiry with Utility Owners, including request for and review of Utility plans provided by Utility Owners;
- (e) Review and analysis of material Governmental Rules applicable to the Project or the Work as of the Setting Date;
- (f) Performance, review and analysis of corings, borings and other investigations within the Project Right of Way; and
- (g) Other activities sufficient to familiarize Design-Build Contractor with surface and subsurface conditions, including the presence of Utilities, Hazardous Materials, archeological, paleontological and cultural resources, and Threatened or Endangered Species, affecting the Site or surrounding locations;

except that none of the foregoing activities includes original research of private records not contained or referenced in the PPA, Reference Information Documents or Technical Provisions.

**Recognized Environmental Conditions** has the meaning set forth in ASTM 1527-05.

**Recovery Schedule** means the schedule Design-Build Contractor is required to provide under Section 4.6.

**Recurring Special Provisions** means the Special Provisions and Plan Details effective as of the Setting Date.

**Reference Plans** means the preliminary schematic plans contained in the “Reference Plans” folder in the Reference Information Documents.

**Reference Information Documents or RIDs** means the documents and information provided on HNTB’s ProjectWise system (pw:\\hntbw356.hntb.org:PWGreat\_Lakes\Documents\Indianapolis Projects\60996 NW Indiana TPA\I-65 ATL\\_Proposer Info\). Proposers may register for access by submitting an HNTB Guest Access Form. When access is granted, instructions to access the data will be provided to the individual user.

**Registered Professional Engineer** means a person who is duly licensed and registered by the State of Indiana to engage in the practice of engineering in the State where the work is being performed.

**Regulations** mean regulations relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Title 49, Code of Federal Regulations, Parts 21, 24, 26 as they relate to nondiscrimination, and Executive Order 11246 titled Equal Employment Opportunity, as amended by Executive Order 11875, as they may be amended from time to time.

**Release of Hazardous Materials** means any spill, leak, emission, release, discharge, injection, escape, leaching, dumping or disposal of Hazardous Materials into the soil, air, water, groundwater or environment, including any exacerbation or disturbance of an existing release or condition involving Hazardous Materials, including off-site migration or deposition.

**Released for Construction** means the certification that is issued by the Lead Engineer when formally issuing final documents for construction as described in Section 3.1 of the Technical Provisions.

**Released for Construction Documents** means the Submittals described in Section 3.1 of the Technical Provisions.

**Replacement Utility Property Interests** means any permanent right, title or interest in real property outside of the Project ROW (e.g., a fee or an easement) which is acquired for a Utility being reinstalled in a new location as a part of the Utility Adjustment Work. The term specifically excludes any statutory right of occupancy or permit granted by a Governmental Entity for occupancy of its real property by a Utility.

**Request for Change Order** means a document submitted by Design-Build Contractor in accordance with Section 13.3.2 requesting that a Change Order be issued.

**Request for Information** means a written request initiated by the Design-Build Contractor or INDOT detailing any need for clarification or information on a portion of the Work or the PPA.

**Request for Proposals** means the Request for Proposals regarding the Project issued by INDOT on May 26, 2016, including all addenda thereto, and all attachments thereto.

**Responsible Proposer Questionnaire** means the RFP Document entitled "Responsible Bidder and Major Participant Questionnaire."

**RFP Documents** means the documents issued as part of the RFP, including all addenda.

**ROW Certification** means written certification that all residential occupants have been relocated to decent, safe and sanitary housing, commercial and non-profit businesses and improvements have been relocated out of the Project ROW and that the portion of the ROW being certified, including Project-Specific Locations, was acquired in accordance with FHWA directives.

**Safety Plan** means the safety plan for Design-Build Contractor's personnel and the general public that Design-Build Contractor is to prepare and implement in accordance with Section 1.3.3 of the Technical Provisions.

**Safety Standards** means those provisions of the Technical Provisions that INDOT indicates that it; INDOT, INDOT, FHWA or AASHTO considers being important measures to protect public safety, worker safety or the safety of property. As a matter

of clarification, provisions of Technical Provisions primarily directed at durability of materials or equipment, where the durability is primarily a matter of life cycle cost rather than protecting public or worker safety, are not Safety Standards.

**Seismic Event** means the trembling or shaking movement of the earth's surface that produces ground motions at the Site that, if prior to Calendar Completion, directly impacts, and causes damage to, temporary or permanent works of the Project.

**Setting Date** means the date that is 15 days before the Proposal Date.

**Site** means the Planned ROW Limits together with those areas designated in writing by INDOT for performance of the Work and such additional areas as may, from time to time, be designated in writing by INDOT for Design-Build Contractor's use in performance of the Work. For purposes of insurance (subject to any notification and other requirements imposed by the insurer(s) for approval), indemnification, safety and security requirements, the Common Construction Wage requirements, and payment for use of equipment, the term "Site" shall also include (a) the field office sites, (b) any property used for bonded storage of material for the Project approved by INDOT under Section 12.3.2.1, (c) staging areas dedicated to the Project, and (d) areas where activities incidental to the Project are being performed by Design-Build Contractor or Subcontractors covered by the worker's compensation policy included in the insurance described in Section 9, but excluding any permanent locations of Design-Build Contractor or such covered Subcontractors.

**Special Provisions** means additions and revisions to INDOT's Standard Specifications. The use of these specific Special Provisions, as applicable, is set forth in the Technical Provisions.

**Spill Prevention Plan** means the plan listed in Section 1.3.3 of the Technical Provisions.

**State** means the State of Indiana.

**Statement of Qualifications** means the Statement of Qualifications submitted by Proposer in response to INDOT's Request for Qualifications issued on December 11, 2015.

**Subcontract** means an agreement between Design-Build Contractor and one or more third parties providing for such third party to perform any part of the Work or provide any materials, equipment, labor or supplies for any part of the Work, or any such agreement between a Subcontractor and its lower tier Subcontractor or a Supplier and its lower tier Supplier, at any tier.

**Subcontractor** means any Person with whom Design-Build Contractor has entered into any Subcontract and any other Person with whom any Subcontractor has further subcontracted any part of the Work, at any tier.

**Submittal** means any document, work product or other written or electronic end product or item required under the PPA Documents to be delivered or submitted to INDOT.

**Substantial Completion** means the date, as determined by INDOT, when the construction of a project is sufficiently completed in accordance with the plans and specifications, as modified by any approved change orders, so that it can be used for its intended purpose. In order for a project to be used for its intended purpose, all lanes shall be, or have the ability to be, opened to traffic without further need for them to be restricted for any purpose except for the placement or maintenance of permanent erosion and sediment control or the maintenance or removal of temporary erosion and sediment control. As a minimum, all of the following criteria must be met: All lanes of the road or bridge shall be completed through its final roadway surface, including shoulders, with all the sidewalks, curbs, drainage features, markings, permanent safety appurtenances, lighting, traffic signals, and signing as shown in the PPA documents.

**Substantial Completion Date** means the date on which Substantial Completion occurs.

**Substantial Completion Deadline** has the meaning set forth in Section 4.2.2.

**Supplier** means any Subcontractor that supplies machinery, equipment, materials or systems to Design-Build Contractor or any Subcontractor in connection with the performance of the Work and that does not perform Work at the Site. Persons, who merely transport, pick up, deliver or carry materials, personnel, parts or equipment or any other items or persons to or from the Site shall not be deemed to be performing Work at the Site. The term "Supplier" includes fabricators and material dealers.

**Surety** means each properly licensed surety company, insurance company or other Person approved by INDOT and authorized to do business in the State, which has issued the Payment Bond or the Performance Bond.

**Technical Provisions** means the PPA Documents identified as Technical Provisions.

**Temporary Adjustment** means (a) any interim relocation of a Utility (i.e. the installation, removal and disposal of the interim facility) pending installation of the permanent facility in the same or a new location, and (b) any removal and reinstallation of a Utility in the same location with or without an interim relocation.

**Termination for Convenience** means a termination of the PPA pursuant to Section 15.

**Third-Party Claims** means any and all claims, disputes, disagreements, causes of action, demands, suits, actions, judgments, investigations or legal or administrative proceedings brought by a Person that is not a Party with respect to damages, injuries, liabilities, obligations, losses, costs, penalties, fines or expenses (including attorneys', accountants' and expert witnesses' fees and expenses) sustained or incurred by such Person.

**Time and Materials Change Order** has the meaning set forth in Section 13.7.

**Time and Materials Work** means Work performed pursuant to a Time and Materials Change Order.

**Traffic Management Center or TMC** means the Indiana Department of Transportation Traffic Management Center (in Indianapolis, Indiana), where information about the regional transportation network is collected and combined with other operational and control data to manage the regional transportation network and to produce traveler information.

**Transportation Management Plan or TMP** has the meaning set forth in Section 11.2 of the Technical Provisions.

**Unidentified Utility** means a Utility, other than a Service Line, where the Utility Information incorrectly indicates that the subject Utility does not exist anywhere within the boundary lines of the Project Right of Way or that is otherwise not identified with Reasonable Accuracy. If any discrepancy exists between the information provided by one component of the Utility Information and that provided by any other component of the Utility Information, only the more accurate information shall be relevant for purposes of this definition.

**Unknown Hazardous Materials** means Hazardous Materials that meet all of the following criteria:

- (a) The Hazardous Materials are in, on or under the Planned ROW Limits, or parcels added to the Project ROW by a INDOT-Directed Change or required due to a Force Majeure Event or Necessary Basic Configuration Change as of the date INDOT makes available to Design-Build Contractor the affected parcel;
- (b) The existence of such Hazardous Materials was not disclosed in, or ascertainable from, the RFP Documents, was not otherwise known to Design-Build Contractor prior to the Proposal Date and would not have become known to Design-Build Contractor by undertaking Reasonable Investigation prior to the Proposal Date; and
- (c) The Hazardous Materials are not required to be removed and disposed of due to a Design-Build Contractor Release of Hazardous Materials.

For purposes of this definition, “makes available” means (i) the Effective Date for parcels acquired as of the Effective Date or (ii) as to parcels not yet acquired as of the Effective Date, the date Design-Build Contractor first receives access to the parcel in accordance with the PPA Documents.

**Uniform Act** means the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601, *et seq.*, as amended, 49 CFR Part 24, and all associated regulations and policies.



**Utility or utility** means a privately, publicly, or cooperatively owned line, facility or system (including municipal and/or government lines, facilities and systems) for transmitting or distributing communications, cable television, power, electricity, gas, oil, crude products, water, steam, waste, or any other similar commodity, including any irrigation system and any fire or police signal system as well as streetlights. The necessary appurtenances to each Utility facility (including fire hydrants as appurtenances to water lines) shall be considered part of such Utility. Without limitation, any Service Line connecting directly to a Utility shall be considered an appurtenance to that Utility, regardless of the ownership of such Service Line.

**Utility Adjustment** means each relocation (temporary or permanent), abandonment and or dormancy, Protection in Place, removal (of previously abandoned Utilities as well as of newly abandoned Utilities), replacement, reinstallation, and/or modification of existing Utilities necessary to accommodate construction, operation, maintenance and/or use of the Project (each a separate “type” of Utility Adjustment); provided, however, that the term “Utility Adjustment” shall not refer to any of the work associated with facilities owned by any Railroad. For any Utility crossing the Project ROW, the Work associated with the Utility Adjustment for each crossing of the Project ROW by that Utility shall be considered a separate Utility Adjustment. For any Utility installed longitudinally within the Project ROW, the Utility Adjustment Work for each continuous segment of that Utility located within the Project Right of Way shall be considered a separate Utility Adjustment.

**Utility Adjustment Plans** means the plans, specifications, and cost estimates furnished for a particular Utility Adjustment.

**Utility Adjustment Work** means all efforts and costs necessary to accomplish the required Utility Adjustments, including all Utility Agreements, coordination, design, design review, permitting, construction, inspection, maintenance of records, relinquishment of Existing Utility Property Interests, preparation of Utility Joint Use Acknowledgements, and acquisition of Replacement Utility Property Interests, whether provided by Design-Build Contractor or by the Utility Owners. The term also includes any reimbursement of Utility Owners that is Design-Build Contractor’s responsibility pursuant to Section 6.3. Any Utility Adjustment Work furnished or performed by Design-Build Contractor is part of the Work; any Utility Adjustment Work furnished or performed by a Utility Owner is not part of the Work.

**Utility Agreement** means a Utility Agreement or any other agreement, as the same may be amended from time to time, between the INDOT and a Utility Owner, providing specific details for the Adjustment of one or more particular Utilities. A document is a Utility Agreement if it meets the foregoing definition, without regard to the title or form of the document.

**Utility Coordinator** has the meaning set forth in Section 1.3 of the Technical Provisions. The Certified INDOT Utility Coordinator is one of the Key Personnel listed in Exhibit 3.

**Utility Delay** has the meaning set forth in Section 6.8.1.

**Utility Easement** means a permanent replacement easement and/or other interest in real property (excluding a franchise) located outside of the Planned ROW Limits that is necessary for an Adjustment.

**Utility Enhancement** has the meaning set forth in Section 6.6.

**Utility Information** means certain information as provided in Attachment 14-1 to Section 14 of the Technical Provisions as well as subsequent information as collected by the Design-Build Contractor in said updated Utility Matrix.

**Utility Matrix** means the Utility Matrix.pdf in the Reference Information Documents.

**Utility Owner** means any private entity or public body (including city, county, state, public corporation or public district) that owns and/or operates a Utility, including cooperative utilities.

**Utility Owner Project** means the design and construction by or at the direction of a Utility Owner of a new Utility other than as part of an Adjustment. Utility Owner Projects shall be entirely the financial obligation of the Utility Owner.

**Utility Plans** means the final installation details and construction documents that are prepared by the Design-Build Contractor or Utility Owner(s) for Utilities being Adjusted to accommodate the Project.

**Value Engineering Change Proposal** has the meaning set forth in Section 22.

**Warranty** or **Warranties** means the express warranties of Design-Build Contractor set forth in Section 11.1.

**Warranty Bond** has the meaning set forth in Section 8.1.3.

**Warranty Period** has the meaning set forth in Section 11.1.2.

**Witness Points** means points that require the Design-Build Contractor to submit identified items to the INDOT, to provide INDOT the opportunity to review, observe, and examine plans, operations and tests.

**Work** means all of the administrative, design, engineering, real property acquisition support services, Utility relocation and support services, procurement, legal, professional, manufacturing, supply, installation, construction, environmental mitigation and management, supervision, management, testing, verification, labor, materials, equipment, maintenance, documentation and other duties, services and cost reimbursements to be furnished and provided by Design-Build Contractor as required by the PPA Documents, including all efforts necessary or appropriate to achieve Final Acceptance of the Project and to fulfill the Warranties, except for those efforts which the PPA Documents expressly specify will be performed by INDOT or other Persons. In certain cases, as determined by INDOT, the term is also used to mean the products of the Work.